

AMENDED IN SENATE JUNE 20, 2002  
AMENDED IN ASSEMBLY MAY 16, 2002  
AMENDED IN ASSEMBLY APRIL 30, 2002  
AMENDED IN ASSEMBLY APRIL 18, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2747**

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**Introduced by Assembly Members Wesson, Cohn, Goldberg, and  
Frommer**  
**(Coauthors: Assembly Members *Alquist, Koretz, Nakano,*  
*Negrete McLeod, and Pavley*)**

February 22, 2002

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An act to add and repeal Sections 6902.5, 17053.35, and 23635 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2747, as amended, Wesson. Tax: credits: qualified motion picture.

The Personal Income Tax Law and the Bank and Corporation Tax Law authorize various credits against the taxes imposed by those laws.

This bill would authorize a credit against those taxes for ~~each~~ taxable ~~year~~ years beginning on or after July 1, 2004, and before January 1, 2010, in an amount equal to ~~a specified percentage~~ 15% of the amount paid or incurred, on or after January 1, 2004, for qualified wages, up to a specified amount, with respect to ~~each California motion picture production~~ *the production of each qualified motion picture*, as defined.

This bill would allow a taxpayer, in lieu of electing the credit for *the production of a qualified motion picture production* against the personal income or ~~bank and~~ corporation tax, to file a claim for a refund of sales or use taxes paid or a credit against liability for sale and use taxes due, equal to the personal income or ~~bank and~~ corporation tax credit.

This bill would require the Technology, Trade, and Commerce Agency to report to the Legislature on the effectiveness of the tax credits authorized by this bill, as specified.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 6902.5 is added to the Revenue and  
2 Taxation Code, to read:

3 6902.5. (a) (1) In lieu of claiming the credit allowed by  
4 Section 17053.35 or 23635, a ~~person~~ *retailer* may claim either a  
5 refund of sales or use taxes paid, or a credit against liability for  
6 sales or use taxes due, that is equal to the credit amount or any  
7 portion thereof that would otherwise be allowed pursuant to those  
8 sections.

9 (2) Any ~~person~~ *retailer* who claims a refund or credit under this  
10 section shall make an irrevocable election to waive the equivalent  
11 amount of credit allowed under Section 17053.35 or 23635. Any  
12 refund or credit claimed under this section shall be in lieu of  
13 claiming any credit under Section 17053.35 or 23635. Any ~~person~~  
14 *retailer* electing to file a claim for refund pursuant to this section  
15 shall provide a copy of the personal income or corporation tax  
16 return on which the tax liability was assessed for which the in-lieu  
17 refund is being claimed under this section.

18 (b) Notwithstanding Section 6961, the board may recover any  
19 refund or credit, or part thereof, that is erroneously made pursuant  
20 to this section. In recovering any erroneous refund or credit made  
21 pursuant to this section, the board, in its discretion, may issue a  
22 deficiency determination in accordance with Article 2  
23 (commencing with Section 6481) or Article 4 (commencing with  
24 Section 6536) of Chapter 5. Except in the case of fraud, that  
25 determination shall be made within three years from the last day

1 of the month following the quarterly period in which the board  
2 approved the refund.

3 (c) The board shall provide an annual listing to the Franchise  
4 Tax Board, in a form and manner agreed upon by the board and the  
5 Franchise Tax Board, of the ~~persons~~ *retailers* who during the year  
6 have claimed a refund or credit of sales or use tax under this section  
7 and the amount of the refund or credit allowed to each ~~person~~  
8 *retailer*.

9 (d) Any refund approved by the board pursuant to this section  
10 shall, upon an appropriation by the Legislature, be payable from  
11 the General Fund.

12 (e) This section shall remain in effect only until December 31,  
13 2010, and as of that date is repealed.

14 ~~SEC. 2. Section 17053.35 is added to the Revenue and~~

15 *SEC. 2. Section 17053.35 is added to the Revenue and*  
16 *Taxation Code, to read:*

17 *17053.35. (a) (1) For taxable years beginning on or after*  
18 *July 1, 2004, and before January 1, 2010, there shall be allowed*  
19 *to a qualified taxpayer as a credit against the "net tax," as defined*  
20 *in Section 17039, an amount equal to 15 percent of the total*  
21 *amount paid or incurred by the qualified taxpayer for qualified*  
22 *wages with respect to the production of each qualified motion*  
23 *picture.*

24 *(2) For each qualified motion picture production, there shall be*  
25 *no more than one taxpayer eligible for the credit.*

26 *(3) Except as otherwise provided in paragraph (4), any*  
27 *otherwise qualified wages paid or incurred in any taxable year*  
28 *prior to the taxable year in which production of the motion picture*  
29 *is completed shall be treated, for purposes of this section only, as*  
30 *if paid or incurred in the taxable year in which production of the*  
31 *motion picture is completed and the credit with respect to those*  
32 *qualified wages shall be allowed in that year.*

33 *(4) In the case of any qualified wages paid or incurred on or*  
34 *after January 1, 2004, and prior to the commencement of the first*  
35 *taxable year of the qualified taxpayer beginning on or after July*  
36 *1, 2004, with respect to a qualified motion picture that is completed*  
37 *prior to the commencement of the qualified taxpayer's first taxable*  
38 *year beginning on or after July 1, 2004, the credit allowed under*  
39 *paragraph (1) shall be claimed by the qualified taxpayer on the*

1 taxpayer's return for the first taxable year beginning on or after  
2 July 1, 2004.

3 (5) Notwithstanding anything to the contrary in this section, no  
4 credit shall be claimed under this section on any return filed for  
5 any taxable year commencing prior to the qualified taxpayer's first  
6 taxable year beginning on or after July 1, 2004.

7 (b) The amount of qualified wages with respect to a qualified  
8 individual that may be taken into account under subdivision (a) for  
9 each qualified motion picture shall be limited to twenty-five  
10 thousand dollars (\$25,000) for each qualified individual. For the  
11 purposes of this subdivision, in the case of episodic television, to  
12 the extent that qualified wages are paid for a qualified individual  
13 on other than on a "per episode" basis, an appropriate amount of  
14 qualified wages shall be apportioned to each qualified motion  
15 picture on which the qualified individual renders service.

16 (c) For purposes of this section, the following definitions shall  
17 apply:

18 (1) "Ancillary product" means any article for sale to the public  
19 that contains a portion of or any element of the motion picture.

20 (2) "Clip use" means a use of any portion of the motion picture  
21 in another motion picture.

22 (3) "Delayed residual compensation" means supplemental  
23 compensation paid at the time that a motion picture is exhibited  
24 through new use, reuse, clip use, or in secondary markets, as  
25 distinguished from payments made at the time of production.

26 (4) (A) "Employee fringe benefits" means the amount  
27 allowable as a deduction under this part to the qualified taxpayer  
28 for any taxable year during the production period with respect to  
29 any of the following:

30 (i) Employer contributions under any stock bonus, pension,  
31 profit sharing, annuity, or similar plan.

32 (ii) Employer-provided coverage under any accident or health  
33 plan for employees.

34 (iii) The cost of life or disability insurance provided to  
35 employees.

36 (B) Any amount treated as wages under clause (i) of  
37 subparagraph (A) of paragraph (12) shall not be taken into  
38 account under this paragraph.

39 (5) "Licensing" means any grant of rights to distribute the  
40 motion picture, in whole or in part.

1 (6) “New use” means any use of a motion picture in a medium  
2 other than the medium for which it was initially created.

3 (7) “Production period” means the period commencing with  
4 approval to proceed with the production project and ending with  
5 delivery of the completed qualified motion picture. In the event the  
6 qualified motion picture is not completed, the ‘production period’  
7 ends when all activity on the project ceases.

8 (8) “Qualified entity” means a personal service corporation as  
9 defined in Section 269A(b)(1) of the Internal Revenue Code, a  
10 payroll services corporation, or any entity receiving qualified  
11 wages with respect to services performed by a qualified individual.

12 (9) (A) “Qualified individual” means any individual who  
13 performs services during the production period in an activity  
14 related to the production of a qualified motion picture, within the  
15 meaning of paragraph (2) of subdivision (b) of Section 6010.6.

16 (B) “Qualified individual” shall not include either of the  
17 following:

18 (i) Any individual described in subparagraph (A), (B), or (C)  
19 of Section 51(i)(1) of the Internal Revenue Code.

20 (ii) Any 5-percent owner, as defined in Section 416(i)(1)(B) of  
21 the Internal Revenue Code, of the qualified taxpayer.

22 (10) (A) “Qualified motion picture” has the same meaning as  
23 “qualified motion picture” in paragraph (3) of subdivision (b) of  
24 Section 6010.6, including, but not limited to, productions in digital  
25 format, provided that both of the following conditions are  
26 satisfied:

27 (i) The total wages paid or incurred for the production of the  
28 qualified motion picture, exclusive of payments excluded pursuant  
29 to subparagraph (B) of paragraph (12), is more than two hundred  
30 thousand dollars (\$200,000), but less than ten million dollars  
31 (\$10,000,000).

32 (ii) At least 50 percent of the total wages paid or incurred for  
33 the production of a qualified motion picture on or after January 1,  
34 2004, are qualified wages.

35 (B) For the purposes of clause (i) of subparagraph (A), the  
36 following additional rules shall apply:

37 (i) In computing the total wages paid or incurred for the  
38 production of a qualified motion picture, all amounts paid or  
39 incurred by all persons or entities that share in the costs of the  
40 qualified motion picture shall be aggregated.

1 (ii) *In the case of an episodic television series, each episode*  
2 *shall be treated as a separate qualified motion picture.*

3 (iii) *For each taxable year beginning in a calendar year after*  
4 *2004, the limits shall be increased by an amount equal to the dollar*  
5 *amount of the limitation multiplied by the cost-of-living*  
6 *adjustment as computed pursuant to subdivision (h) of Section*  
7 *17041. If any increase in the two hundred thousand dollar*  
8 *(\$200,000) limitation is not a multiple of five thousand dollars*  
9 *(\$5,000), the resulting adjustment amount shall be rounded to the*  
10 *nearest multiple of five thousand dollars (\$5,000). If any increase*  
11 *in the ten million dollar (\$10,000,000) limitation is not a multiple*  
12 *of five hundred thousand dollars (\$500,000), the resulting*  
13 *adjustment amount shall be rounded to the nearest multiple of five*  
14 *hundred thousand dollars (\$500,000).*

15 (C) *For purposes of computing the limitations under this*  
16 *paragraph, “wages” means all amounts described in*  
17 *subparagraph (A) of paragraph (12), whether these amounts are*  
18 *paid for services performed or rendered within or without this*  
19 *state.*

20 (11) *“Qualified taxpayer” means a taxpayer who is either of*  
21 *the following:*

22 (A) *The copyright owner of the qualified motion picture on the*  
23 *date the qualified motion picture is first available to be exhibited*  
24 *or broadcast to its general audience.*

25 (B) *An entity, designated by the copyright owner specified in*  
26 *subparagraph (A), with exploitation rights on the date the*  
27 *qualified motion picture is first available to be exhibited or*  
28 *broadcast to its general audience.*

29 *In the event the qualified motion picture is not completed, the*  
30 *copyright owner in subparagraph (A) and the designated entity in*  
31 *subparagraph (B) shall be determined at the end of the production*  
32 *period as defined in paragraph (7).*

33 (12) (A) *“Qualified wages” means all of the following:*

34 (i) *Any wages required to be reported under Section 13050 of*  
35 *the Unemployment Insurance Code that were paid or incurred by*  
36 *a qualified taxpayer with respect to a qualified individual for*  
37 *services performed within this state on or after January 1, 2004.*

38 (ii) *The portion of any employee fringe benefits paid or*  
39 *incurred by the qualified taxpayer properly allocable to qualified*  
40 *wage amounts described in clause (i).*



1 (iii) Any payments made to a qualified entity for services  
2 performed in this state on or after January 1, 2004, by qualified  
3 individuals (within the meaning of paragraph (9)).

4 (iv) Remuneration paid on or after January 1, 2004, to an  
5 independent contractor who is a qualified individual for services  
6 performed within this state by that qualified individual.

7 (B) "Qualified wages" does not include any of the following:

8 (i) Wages for legal or accounting services, except for legal or  
9 accounting services performed by production employees.

10 (ii) Wages related to new use, reuse, clip use, licensing,  
11 secondary markets, or delayed residual compensation, or the  
12 creation of any ancillary product, including, but not limited to, a  
13 soundtrack album, toy, or game.

14 (iii) Wages paid or incurred with respect to acquisition,  
15 development, turnaround, or any rights thereto.

16 (iv) Wages related to marketing, promotion, or distribution of  
17 a qualified motion picture.

18 (13) "Reuse" means any use of a qualified motion picture in the  
19 same medium for which it was created, following the initial use in  
20 that medium.

21 (14) "Secondary markets" means media in which a motion  
22 picture is exhibited following the initial media in which it is  
23 exhibited.

24 (d) If a qualified taxpayer claims a credit pursuant to this  
25 section for any qualified wages paid or incurred with respect to a  
26 particular qualified individual, no other credit shall be allowed  
27 under this part to the qualified taxpayer with respect to the same  
28 wage payments paid or incurred with respect to that qualified  
29 individual for the same taxable period or periods.

30 (e) In the case where the credit allowed by this section exceeds  
31 the "net tax," the excess may be carried over to reduce the "net  
32 tax" in the following year, and succeeding seven years if necessary,  
33 until the credit is exhausted.

34 (f) Any deduction claimed by a qualified taxpayer for amounts  
35 paid or incurred by the qualified taxpayer for qualified wages with  
36 respect to the production of each qualified motion picture shall be  
37 reduced in an amount equal to the amount of the credit claimed or  
38 assigned pursuant to this section.

39 (g) No credit pursuant to this section shall be allowed unless the  
40 qualified taxpayer or the assignee substantiates by adequate

1 records or by sufficient evidence corroborating his or her own  
2 statement that the qualified wages on which the credit was  
3 calculated were actually paid or incurred in the amount claimed.

4 (h) This section shall remain in effect only until December 1,  
5 2010, and as of that date is repealed.

6 SEC. 3. Section 23635 is added to the Revenue and Taxation  
7 Code, to read:

8 23635. (a) (1) For taxable years beginning on or after July  
9 1, 2004, and before January 1, 2010, there shall be allowed to a  
10 qualified taxpayer as a credit against the "tax," as defined in  
11 Section 23036, an amount equal to 15 percent of the total amount  
12 paid or incurred by the qualified taxpayer for qualified wages with  
13 respect to the production of each qualified motion picture.

14 (2) For each qualified motion picture production, there shall be  
15 no more than one taxpayer eligible for the credit.

16 (3) Except as otherwise provided in paragraph (4), any  
17 otherwise qualified wages paid or incurred in any taxable year  
18 prior to that taxable year in which production of the motion picture  
19 is completed shall be treated, for purposes of this section only, as  
20 if paid or incurred in the taxable year in which production of the  
21 motion picture is completed and the credit with respect to those  
22 qualified wages shall be allowed in that year.

23 (4) In the case of any qualified wages paid or incurred on or  
24 after January 1, 2004, and prior to the commencement of the first  
25 taxable year of the qualified taxpayer beginning on or after July  
26 1, 2004, with respect to a qualified motion picture that is completed  
27 prior to the commencement of the qualified taxpayer's first taxable  
28 year beginning on or after July 1, 2004, the credit provided under  
29 paragraph (1) shall be claimed by the qualified taxpayer on the  
30 taxpayer's return for the first taxable year beginning on or after  
31 July 1, 2004.

32 (5) Notwithstanding anything to the contrary in this section, no  
33 credit shall be claimed under this section on any return filed for  
34 any taxable year commencing prior to the qualified taxpayer's first  
35 taxable year beginning on or after July 1, 2004.

36 (b) The amount of qualified wages with respect to a qualified  
37 individual that may be taken into account under subdivision (a) for  
38 each qualified motion picture shall be limited to twenty-five  
39 thousand dollars (\$25,000) for each qualified individual. For the  
40 purposes of this subdivision, in the case of episodic television, to



1 *the extent that qualified wages are paid for a qualified individual*  
2 *on other than on a ‘per episode’ basis, an appropriate amount of*  
3 *qualified wages shall be apportioned to each qualified motion*  
4 *picture on which the qualified individual renders service.*

5 *(c) For purposes of this section, the following definitions shall*  
6 *apply:*

7 *(1) “Ancillary product” means any article for sale to the public*  
8 *that contains a portion of or any element of the motion picture.*

9 *(2) “Clip use” means a use of any portion of the motion picture*  
10 *in another motion picture.*

11 *(3) “Delayed residual compensation” means supplemental*  
12 *compensation paid at the time that a motion picture is exhibited*  
13 *through new use, reuse, clip use, or in secondary markets, as*  
14 *distinguished from payments made at the time of production.*

15 *(4) (A) “Employee fringe benefits” means the amount*  
16 *allowable as a deduction under this part to the qualified taxpayer*  
17 *for any taxable year during the production period with respect to*  
18 *any of the following:*

19 *(i) Employer contributions under any stock bonus, pension,*  
20 *profit sharing, annuity, or similar plan.*

21 *(ii) Employer-provided coverage under any accident or health*  
22 *plan for employees.*

23 *(iii) The cost of life or disability insurance provided to*  
24 *employees.*

25 *(B) Any amount treated as wages under clause (i) of*  
26 *subparagraph (A) of paragraph (12) shall not be taken into*  
27 *account under this paragraph.*

28 *(5) “Licensing” means any grant of rights to distribute the*  
29 *motion picture, in whole or in part.*

30 *(6) “New use” means any use of a motion picture in a medium*  
31 *other than the medium for which it was initially created.*

32 *(7) “Production period” means the period commencing with*  
33 *approval to proceed with the production project and ending with*  
34 *delivery of the completed qualified motion picture. In the event the*  
35 *qualified motion picture is not completed, the ‘production period’*  
36 *ends when all activity on the project ceases.*

37 *(8) “Qualified entity” means a personal service corporation as*  
38 *defined in Section 269A(b)(1) of the Internal Revenue Code, a*  
39 *payroll services corporation, or any entity receiving qualified*  
40 *wages with respect to services performed by a qualified individual.*

1 (9) (A) “*Qualified individual*” means any individual who  
2 performs services during the production period in an activity  
3 related to the production of a qualified motion picture, within the  
4 meaning of paragraph (2) of subdivision (b) of Section 6010.6.

5 (B) “*Qualified individual*” shall not include either of the  
6 following:

7 (i) Any individual described in subparagraph (A), (B), or (C)  
8 of Section 51(i)(1) of the Internal Revenue Code.

9 (ii) Any 5-percent owner, as defined in Section 416(i)(1)(B) of  
10 the Internal Revenue Code, of the qualified taxpayer.

11 (10) (A) “*Qualified motion picture*” has the same meaning as  
12 ‘qualified motion picture’ in paragraph (3) of subdivision (b) of  
13 Section 6010.6, including, but not limited to, productions in digital  
14 format, provided that both of the following conditions are  
15 satisfied:

16 (i) The total wages paid or incurred for the production of the  
17 qualified motion picture, exclusive of payments excluded pursuant  
18 to subparagraph (B) of paragraph (12), is more than two hundred  
19 thousand dollars (\$200,000), but less than ten million dollars  
20 (\$10,000,000).

21 (ii) At least 50 percent of the total wages paid or incurred for  
22 the production of the qualified motion picture on or after January  
23 1, 2004, are qualified wages.

24 (B) For the purposes of clause (i) of subparagraph (A) the  
25 following additional rules shall apply:

26 (i) In computing the total wages paid or incurred for the  
27 production of a qualified motion picture, all amounts paid or  
28 incurred by all persons or entities that share in the costs of the  
29 qualified motion picture shall be aggregated.

30 (ii) In the case of an episodic television series, each episode  
31 shall be treated as a separate qualified motion picture.

32 (iii) For each taxable year beginning in a calendar year after  
33 2004, the limits shall be increased by an amount equal to the dollar  
34 amount of the limitation multiplied by the cost-of-living  
35 adjustment as computed pursuant to subdivision (h) of Section  
36 17041. If any increase in the two hundred thousand dollar  
37 (\$200,000) limitation is not a multiple of five thousand dollars  
38 (\$5,000), the resulting adjustment amount shall be rounded to the  
39 nearest multiple of five thousand dollars (\$5,000). If any increase  
40 in the ten million dollar (\$10,000,000) limitation is not a multiple

1 of five hundred thousand dollars (\$500,000), the resulting  
2 adjustment amount shall be rounded to the nearest multiple of five  
3 hundred thousand dollars (\$500,000).

4 (C) For purposes of computing the limitations under this  
5 paragraph, “wages” means all amounts described in  
6 subparagraph (A) of paragraph (12), whether these amounts are  
7 paid or services performed or rendered within or without this state.

8 (11) “Qualified taxpayer” means a taxpayer who is either of  
9 the following:

10 (A) The copyright owner of the qualified motion picture on the  
11 date the qualified motion picture is first available to be exhibited  
12 or broadcast to its general audience.

13 (B) An entity, designated by the copyright owner specified in  
14 subparagraph (A), with exploitation rights on the date the  
15 qualified motion picture is first available to be exhibited or  
16 broadcast to its general audience.

17 In the event the qualified motion picture is not completed, the  
18 copyright owner in subparagraph (A) and the designated entity in  
19 subparagraph (B) shall be determined at the end of the production  
20 period as defined in paragraph (7).

21 (12) (A) “Qualified wages” means all of the following:

22 (i) Any wages required to be reported under Section 13050 of  
23 the Unemployment Insurance Code that were paid or incurred by  
24 a qualified taxpayer with respect to a qualified individual for  
25 services performed within this state on or after January 1, 2004.

26 (ii) The portion of any employee fringe benefits paid or  
27 incurred by the qualified taxpayer properly allocable to qualified  
28 wage amounts described in clause (i).

29 (iii) Any payments made to a qualified entity for services  
30 performed in this state on or after January 1, 2004, by qualified  
31 individuals (within the meaning of paragraph (9)).

32 (iv) Remuneration paid on or after January 1, 2004, to an  
33 independent contractor who is a qualified individual for services  
34 performed within this state by that qualified individual.

35 (B) “Qualified wages” does not include any of the following:

36 (i) Wages for legal or accounting services, except for legal or  
37 accounting services performed by production employees.

38 (ii) Wages related to new use, reuse, clip use, licensing,  
39 secondary markets, or delayed residual compensation, or the

1 creation of any ancillary product, including, but not limited to, a  
2 soundtrack album, toy, or game.

3 (iii) Wages paid or incurred with respect to acquisition,  
4 development, turnaround, or any rights thereto.

5 (iv) Wages related to marketing, promotion, or distribution of  
6 a qualified motion picture.

7 (13) “Reuse” means any use of a qualified motion picture in the  
8 same medium for which it was created, following the initial use in  
9 that medium.

10 (14) “Secondary markets” means media in which a motion  
11 picture is exhibited following the initial media in which it is  
12 exhibited.

13 (d) If the qualified taxpayer claims a credit pursuant to this  
14 section for qualified wages paid or incurred with respect to a  
15 particular qualified individual, no other credit shall be allowed  
16 under this part to the qualified taxpayer with respect to the same  
17 wage payments paid or incurred with respect to that qualified  
18 individual for the same taxable period or periods.

19 (e) (1) Subject to the requirements of this subdivision, a  
20 qualified taxpayer may elect to assign all, or any portion, of the  
21 eligible amount (as defined in subparagraph (A) of paragraph (2))  
22 to one or more taxpayers within the same controlled group.

23 (2) (A) For purposes of this subdivision, for any taxable year  
24 of the qualified taxpayer the “eligible amount” shall mean the  
25 total amount of any credits allowed under this section to the  
26 qualified taxpayer, including any credit carryovers representing  
27 credits allowed during the preceding two taxable years, reduced  
28 by the amount of any allowed credits, including credit carryovers,  
29 that have been claimed by the qualified taxpayer against the “tax”  
30 for any taxable year.

31 (B) Immediately following any assignment under this  
32 subdivision, the qualified taxpayer shall reduce the eligible  
33 amount by the amount of any credit or credit carryover, as the case  
34 may be and as specifically identified in the assignment agreement  
35 that is properly assigned under this subdivision.

36 (3) (A) For purposes of this subdivision, “controlled group”  
37 means all entities that are under common control. Control, as used  
38 in this subparagraph, is the ability of any person, as a corporate  
39 parent or other entity, to direct the policies or actions of another  
40 entity through stock or other ownership.

(B) The determination of whether a taxpayer is a member of the controlled group that includes the qualified taxpayer shall be made as of the day the assignment of the credit is made.

(4) The election provided in paragraph (1) shall only be valid if it satisfies each of the following conditions:

(A) The election shall be made on the qualified taxpayer's timely filed original return for the taxable year in which the assignment is made, or on an information return specified by the Franchise Tax Board, filed no more often than quarterly commencing on July 1, 2004, and to which the written agreement specified in subparagraph (D) is attached.

(B) The election shall be irrevocable once made.

(C) The election shall identify the assignee to whom any credit was assigned, and shall also contain the assignee's California taxpayer identification number.

(D) The assignment shall be made pursuant to a written agreement, a copy of which shall be made available to the Franchise Tax Board upon request, between the assignor and the assignee that contains at least all of the following provisions:

(i) The agreement shall, with sufficient specificity, identify the credit amount being assigned by the assignor to the assignee, as well as the taxable year in which the allowed credit was originally allowed to the assignor.

(ii) The agreement shall contain a provision specifying that the assignor and assignee agree that they shall be jointly and severally liable with respect to the assigned credit amount.

(iii) The agreement shall contain a provision specifying that both the assignor and assignee agree that the Franchise Tax Board shall be permitted to disclose to the assignor or assignee, as the case may be, any otherwise confidential tax information relating to the other party, except that this disclosure shall be limited to that tax information necessary for either party to defend any proposed adjustment or denial of a claim for refund with respect to the credit assigned under this subdivision.

(5) Notwithstanding anything to the contrary in Part 10 (commencing with Section 17001), Part 10.2 (commencing with Section 18401), or this part, the Franchise Tax Board shall be entitled to collect any taxes attributable to the adjustment of any credit assigned under this subdivision from either the assignor or the assignee, or both, without limitation.



(6) The assignee may first claim the assigned credit amount on the assignee's return for the assignee's first taxable year ending after the date on which the assignment is made, but in no event will the assignee be entitled to claim the assigned credit in any earlier taxable year. If the assigned credit amount exceeds the assignee's "tax" for that taxable year, the excess may be carried over as provided in subdivision (f), to the extent of the assignor's original carry forward period.

(7) If the Franchise Tax Board determines that the amount of any credit claimed by a taxpayer (whether a qualified taxpayer or an assignee) on an original or amended return is more than the amount of credit allowed under this section, it shall mail a notice of proposed deficiency assessment (based on a credit adjustment) to the taxpayer. A proposed deficiency assessment (based on a credit adjustment) shall become final under the provisions of Part 10.2 (commencing with Section 18401) with respect to the amount of the credit for that taxpayer and any assignee or assignor.

(8) The Franchise Tax Board may prescribe, by forms and instructions, any additional information to be contained in the election permitted under this subdivision.

(9) Assignment of a tax credit by the qualified taxpayer for consideration shall be treated as a reduction of tax attributes of the qualified taxpayer and the assignee.

(f) In the case where the credit allowed by this section exceeds the "tax," the excess may be carried over to reduce the "tax" in the following year, and succeeding seven years if necessary, until the credit is exhausted.

(g) Any deduction claimed by a qualified taxpayer for amounts paid or incurred by the qualified taxpayer for qualified wages with respect to the production of each qualified motion picture shall be reduced in an amount equal to the amount of the credit claimed or assigned pursuant to this section.

(h) No credit pursuant to this section shall be allowed unless the qualified taxpayer or the assignee substantiates by adequate records or by sufficient evidence corroborating his or her own statement that the qualified wages on which the credit was calculated were actually paid or incurred in the amount claimed.

(i) This section shall remain in effect only until December 1, 2010, and as of that date is repealed.

~~Taxation Code, to read:~~



~~17053.35.—(a) For each taxable year beginning on or after July 1, 2004, and before January 1, 2010, there shall be allowed to a qualified person as a credit against the “net tax,” as defined in Section 17039, an amount equal to 15 percent of the total amount paid or incurred by the taxpayer on or after January 1, 2004, for qualified wages with respect to each qualified motion picture production. For each qualified motion picture production, there shall be no more than one taxpayer eligible for the credit.~~

~~(b) In the case of a qualified individual in any qualified motion picture located in an area designated as an enterprise zone pursuant to the Enterprise Zone Act (Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code), for each taxable year beginning on or after July 1, 2004, and before January 1, 2010, there shall be allowed to a qualified person as a credit against the “net tax,” as defined in Section 17039, an amount equal to 25 percent of the total amount paid or incurred by the taxpayer on or after January 1, 2004, for qualified wages with respect to each qualified motion picture.~~

~~(c) With respect to each qualified motion picture, the amount of qualified wages paid or incurred to each qualified individual or qualified entity on behalf of each qualified individual that shall be taken into account in computing the credit in subdivision (a) shall not exceed twenty five thousand dollars (\$25,000).~~

~~(d) For purposes of this section, the following definitions apply:~~

~~(1) “Employee fringe benefit expenses” means the amount allowable as a deduction under this part to the employer for any taxable year with respect to all of the following:~~

~~(A) Employer contributions under any stock bonus, pension, profit sharing, annuity, or similar plan.~~

~~(B) Employer-provided coverage under any accident or health plan for employees.~~

~~(C) The cost of life or disability insurance provided to employees.~~

~~Any amount treated as wages under clause (i) of subparagraph (A) of paragraph (6) shall not be taken into account under this paragraph.~~

~~(2) “Qualified entity” means a personal service corporation as defined in Section 269A(b)(1) of the Internal Revenue Code, a~~

~~1 payroll services corporation, or any entity receiving qualified  
2 wages on behalf of a qualified individual.~~

~~3 (3) “Qualified individual” means, with respect to any period,  
4 any individual who renders personal services, if substantially all  
5 of the services are performed during the period in an activity  
6 related to any qualified motion picture. “Qualified individual”  
7 shall not include either of the following:~~

~~8 (A) Any individual described in subparagraph (A), (B), or (C)  
9 of Section 51(i)(1) of the Internal Revenue Code.~~

~~10 (B) Any 5-percent owner, as defined in Section 416(i)(1)(B) of  
11 the Internal Revenue Code.~~

~~12 (4) “Qualified motion picture” has the same meaning as  
13 “qualified motion picture” in paragraph (3) of subdivision (b) of  
14 Section 6010.6, including, but not limited to, productions in digital  
15 format, where both of the following exist:~~

~~16 (A) The total cost of wages of the qualified motion picture,  
17 exclusive of payments excluded pursuant to subparagraph (B) of  
18 paragraph (6), is more than two hundred thousand dollars  
19 (\$200,000), but less than ten million dollars (\$10,000,000). For  
20 purposes of this subparagraph, in the case of an episodic television  
21 series, each episode shall constitute a separate motion picture. In  
22 the case of any taxable year beginning in a calendar year after  
23 2004, the two hundred thousand dollars (\$200,000) and the ten  
24 million dollars (\$10,000,000) shall be increased by an amount  
25 equal to such dollar amount, multiplied by the cost-of-living  
26 adjustment as computed in subdivision (h) of Section 17041. If any  
27 increase for cost of living of the two hundred thousand dollar  
28 (\$200,000) limit is not a multiple of five thousand dollars  
29 (\$5,000), that amount shall be rounded to the nearest multiple of  
30 five thousand dollars (\$5,000). If any increase for cost of living of  
31 the ten million dollar (\$10,000,000) limit is not a multiple of five  
32 hundred thousand dollars (\$500,000), that amount shall be  
33 rounded to the nearest multiple of five hundred thousand dollars  
34 (\$500,000).~~

~~35 (B) Fifty percent of the total wages of the production are  
36 qualified wages.~~

~~37 (5) “Qualified person” means the holder of legal title to a  
38 qualified motion picture.~~

~~39 (6) (A) “Qualified wages” means all of the following:~~

1 ~~(i) Any compensation paid or incurred by an employer for~~  
2 ~~services performed in this state on or after January 1, 2004, by an~~  
3 ~~employee while the employee is a qualified individual.~~

4 ~~(ii) The employee fringe benefit expenses of the employer~~  
5 ~~allocable to the services performed in this state on or after January~~  
6 ~~1, 2004, by the employee.~~

7 ~~(iii) Any payments made to a qualified entity for services~~  
8 ~~performed by qualified individuals in this state on or after January~~  
9 ~~1, 2004.~~

10 ~~(iv) Compensation paid to independent contractors who are~~  
11 ~~qualified individuals for services personally rendered in this state~~  
12 ~~on or after January 1, 2004.~~

13 ~~(B) "Qualified wages" does not include any of the following:~~

14 ~~(i) Any compensation for legal or accounting services, except~~  
15 ~~for legal or accounting services performed by production~~  
16 ~~employees.~~

17 ~~(ii) Any costs arising from new use, reuse, clip use, licensing,~~  
18 ~~secondary markets, or delayed residual compensation, or the~~  
19 ~~creation of any ancillary product, including, but not limited to, a~~  
20 ~~soundtrack album, toy, or game.~~

21 ~~(iii) Any cost or fee incurred with respect to acquisition,~~  
22 ~~development, turnaround, or any rights thereto.~~

23 ~~(iv) Any marketing, promotional, or distribution costs.~~

24 ~~(7) "Wages" means all amounts described in subparagraph (A)~~  
25 ~~of paragraph (6), whether these amounts are paid for services~~  
26 ~~performed or rendered within or without this state.~~

27 ~~(c) For purposes of this section, all employers treated as a single~~  
28 ~~employer under subsection (a) or (b) of Section 52 of the Internal~~  
29 ~~Revenue Code shall be treated as a single employer. The credit, if~~  
30 ~~any, determined under this section with respect to each employer~~  
31 ~~shall be its proportionate share of the wages giving rise to the~~  
32 ~~credit.~~

33 ~~(f) No credit shall be allowed under any other provision of this~~  
34 ~~chapter for qualified wages paid to any employee during any~~  
35 ~~taxable year if the employer is allowed a credit under this section~~  
36 ~~for any qualified wages.~~

37 ~~(g) (1) A taxpayer may elect to assign any portion of any credit~~  
38 ~~allowed under this section to one or more taxpayers within the~~  
39 ~~same controlled group for each taxable year in which the credit is~~  
40 ~~allowed. For purposes of this subdivision, "controlled group"~~

1 means “controlled group” as defined in Section 1563(a) of the  
2 Internal Revenue Code, except that:

3 (A) “50” shall be substituted for “80” each place it appears in  
4 Section 1563(a)(1) of the Internal Revenue Code.

5 (B) The determination shall be made without regard to  
6 subsections (a)(4) and (c)(3)(C) of Section 1563 of the Internal  
7 Revenue Code.

8 (2) The election provided in paragraph (1):

9 (A) May be based on any method selected by the taxpayer that  
10 originally receives the credit.

11 (B) Shall be irrevocable for the taxable year the credit is  
12 allowed, once made.

13 (C) May be changed for any subsequent taxable year, if the  
14 election to make the assignment is expressly shown on each of the  
15 returns of the taxpayers within the same controlled group that  
16 assigns and receives the credits.

17 (D) May be applied to credits carried over from previous  
18 taxable years.

19 (h) The taxpayer may elect to take the credit allowed by this  
20 section, which credit shall be in lieu of any other credit allowed by  
21 this part for the costs for which a credit is allowed by this section.

22 (i) In the case where the credit allowed by this section exceeds  
23 the “tax,” the excess may be carried over to reduce the “tax” in  
24 the following year, and succeeding years if necessary, until the  
25 credit is exhausted.

26 (j) This section shall remain in effect only until December 1,  
27 2010, and as of that date is repealed.

28 SEC. 3. Section 23635 is added to the Revenue and Taxation  
29 Code, to read:

30 23635. (a) For each taxable year beginning on or after July 1,  
31 2004, and before January 1, 2010, there shall be allowed to a  
32 qualified person as a credit against the “tax,” as defined in Section  
33 23036, an amount equal to 15 percent of the total amount paid or  
34 incurred by the taxpayer on or after January 1, 2004, for qualified  
35 wages with respect to each qualified motion picture production.  
36 For each qualified motion picture production, there shall be no  
37 more than one taxpayer eligible for the credit.

38 (b) In the case of a qualified individual in any qualified motion  
39 picture located in an area designated as an enterprise zone pursuant  
40 to the Enterprise Zone Act (Chapter 12.8 (commencing with

~~Section 7070) of Division 7 of Title 1 of the Government Code), for each taxable year beginning on or after July 1, 2004, and before January 1, 2010, there shall be allowed to a qualified person as a credit against the “tax,” as defined in Section 23036, an amount equal to 25 percent of the total amount paid or incurred by the taxpayer on or after January 1, 2004, for qualified wages with respect to each qualified motion picture.~~

~~(e) With respect to each qualified motion picture, the amount of qualified wages paid or incurred to each qualified individual or qualified entity on behalf of each qualified individual that shall be taken into account in computing the credit in subdivision (a) shall not exceed twenty five thousand dollars (\$25,000).~~

~~(d) For purposes of this section, the following definitions apply:~~

~~(1) “Employee fringe benefit expenses” means the amount allowable as a deduction under this part to the employer for any taxable year with respect to all of the following:~~

~~(A) Employer contributions under any stock bonus, pension, profit sharing, annuity, or similar plan.~~

~~(B) Employer-provided coverage under any accident or health plan for employees.~~

~~(C) The cost of life or disability insurance provided to employees.~~

~~Any amount treated as wages under clause (i) of subparagraph (A) of paragraph (6) shall not be taken into account under this paragraph.~~

~~(2) “Qualified entity” means a personal service corporation as defined in Section 269A(b)(1) of the Internal Revenue Code, a payroll services corporation, or any entity receiving qualified wages on behalf of a qualified individual.~~

~~(3) “Qualified individual” means, with respect to any period, any individual who renders personal services, if substantially all of the services are performed during the period in an activity related to any qualified motion picture. “Qualified individual” shall not include either of the following:~~

~~(A) Any individual described in subparagraph (A), (B), or (C) of Section 51(i)(1) of the Internal Revenue Code.~~

~~(B) Any 5 percent owner, as defined in Section 416(i)(1)(B) of the Internal Revenue Code.~~

1 ~~(4) “Qualified motion picture” has the same meaning as~~  
2 ~~“qualified motion picture” in paragraph (3) of subdivision (b) of~~  
3 ~~Section 6010.6, including, but not limited to, productions in digital~~  
4 ~~format, where both of the following exist:~~

5 ~~(A) The total cost of wages of the qualified motion picture,~~  
6 ~~exclusive of payments excluded pursuant to subparagraph (B) of~~  
7 ~~paragraph (6), is more than two hundred thousand dollars~~  
8 ~~(\$200,000), but less than ten million dollars (\$10,000,000). For~~  
9 ~~purposes of this subparagraph, in the case of an episodic television~~  
10 ~~series, each episode shall constitute a separate motion picture. In~~  
11 ~~the case of any taxable year beginning in a calendar year after~~  
12 ~~2004, the two hundred thousand dollars (\$200,000) and the ten~~  
13 ~~million dollars (\$10,000,000) shall be increased by an amount~~  
14 ~~equal to such dollar amount, multiplied by the cost of living~~  
15 ~~adjustment as computed in subdivision (h) of Section 17041. If any~~  
16 ~~increase for cost of living of the two hundred thousand dollar~~  
17 ~~(\$200,000) limit is not a multiple of five thousand dollars~~  
18 ~~(\$5,000), that amount shall be rounded to the nearest multiple of~~  
19 ~~five thousand dollars (\$5,000). If any increase for cost of living of~~  
20 ~~the ten million dollar (\$10,000,000) limit is not a multiple of five~~  
21 ~~hundred thousand dollars (\$500,000), that amount shall be~~  
22 ~~rounded to the nearest multiple of five hundred thousand dollars~~  
23 ~~(\$500,000).~~

24 ~~(B) Fifty percent of the total wages of the production are~~  
25 ~~qualified wages.~~

26 ~~(5) “Qualified person” means the holder of legal title to a~~  
27 ~~qualified motion picture.~~

28 ~~(6) (A) “Qualified wages” means all of the following:~~

29 ~~(i) Any compensation paid or incurred by an employer for~~  
30 ~~services performed in this state on or after January 1, 2004, by an~~  
31 ~~employee while the employee is a qualified individual.~~

32 ~~(ii) The employee fringe benefit expenses of the employer~~  
33 ~~allocable to the services performed in this state on or after January~~  
34 ~~1, 2004, by the employee.~~

35 ~~(iii) Any payments made to a qualified entity for services~~  
36 ~~performed by qualified individuals in this state on or after January~~  
37 ~~1, 2004.~~

38 ~~(iv) Compensation paid to independent contractors who are~~  
39 ~~qualified individuals for services personally rendered in this state~~  
40 ~~on or after January 1, 2004.~~



1 ~~(B) “Qualified wages” does not include any of the following:~~

2 ~~(i) Any compensation for legal or accounting services, except~~  
3 ~~for legal or accounting services performed by production~~  
4 ~~employees.~~

5 ~~(ii) Any costs arising from new use, reuse, clip use, licensing,~~  
6 ~~secondary markets, or delayed residual compensation, or the~~  
7 ~~creation of any ancillary product, including, but not limited to, a~~  
8 ~~soundtrack album, toy, or game.~~

9 ~~(iii) Any cost or fee incurred with respect to acquisition,~~  
10 ~~development, turnaround, or any rights thereto.~~

11 ~~(iv) Any marketing, promotional, or distribution costs.~~

12 ~~(7) “Wages” means all amounts described in subparagraph (A)~~  
13 ~~of paragraph (6), whether these amounts are paid for services~~  
14 ~~performed or rendered within or without this state.~~

15 ~~(e) For purposes of this section, all employers treated as a single~~  
16 ~~employer under subsection (a) or (b) of Section 52 of the Internal~~  
17 ~~Revenue Code shall be treated as a single employer. The credit, if~~  
18 ~~any, determined under this section with respect to each employer~~  
19 ~~shall be its proportionate share of the wages giving rise to the~~  
20 ~~credit.~~

21 ~~(f) No credit shall be allowed under any other provision of this~~  
22 ~~chapter for qualified wages paid to any employee during any~~  
23 ~~taxable year if the employer is allowed a credit under this section~~  
24 ~~for any qualified wages.~~

25 ~~(g) (1) A taxpayer may elect to assign any portion of any credit~~  
26 ~~allowed under this section to one or more taxpayers within the~~  
27 ~~same controlled group for each taxable year in which the credit is~~  
28 ~~allowed. For purposes of this subdivision, “controlled group”~~  
29 ~~means “controlled group” as defined in Section 1563(a) of the~~  
30 ~~Internal Revenue Code, except that:~~

31 ~~(A) “50” shall be substituted for “80” each place it appears in~~  
32 ~~Section 1563(a)(1) of the Internal Revenue Code.~~

33 ~~(B) The determination shall be made without regard to~~  
34 ~~subsections (a)(4) and (c)(3)(C) of Section 1563 of the Internal~~  
35 ~~Revenue Code.~~

36 ~~(2) The election provided in paragraph (1):~~

37 ~~(A) May be based on any method selected by the taxpayer that~~  
38 ~~originally receives the credit.~~

39 ~~(B) Shall be irrevocable for the taxable year the credit is~~  
40 ~~allowed, once made.~~

~~(C) May be changed for any subsequent taxable year, if the election to make the assignment is expressly shown on each of the returns of the taxpayers within the same controlled group that assigns and receives the credits.~~

~~(D) May be applied to credits carried over from previous taxable years.~~

~~(h) The taxpayer may elect to take the credit allowed by this section, which credit shall be in lieu of any other credit allowed by this part for the costs for which a credit is allowed by this section.~~

~~(i) In the case where the credit allowed by this section exceeds the "tax," the excess may be carried over to reduce the "tax" in the following year, and succeeding years if necessary, until the credit is exhausted.~~

~~(j) This section shall remain in effect only until December 1, 2010, and as of that date is repealed.~~

SEC. 4. (a) On or before December 31, 2007, and on or before December 31, 2009, the Technology, Trade, and Commerce Agency shall report to the Legislature on the effectiveness of the incentives created by this act. In preparing the report, the agency shall consider, but is not limited to considering, all of the following:

(1) The number and increase or decrease of qualified motion pictures produced in California.

(2) The amount of total qualified wages paid or incurred in California.

(3) The level of employment in the production industry in California.

(b) The agency may consult with the Employment Development Department, the Franchise Tax Board, the State Board of Equalization, representatives of industry and labor organizations, and agencies of local government before completing its report.

SEC. 5. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 6. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.